

***United States Court of Appeals
for the Second Circuit***



EXHIBITS



No. 76-6150

United States Court of Appeals

FOR THE SECOND CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff-Appellee

v.

**LOCAL 14, INTERNATIONAL UNION OF OPERATING ENGINEERS;
LOCAL 15, INTERNATIONAL UNION OF OPERATING ENGINEERS;
ET AL., Defendants-Appellants**

**On Appeal from the United States District Court
for the Southern District of New York**

EXHIBIT VOLUME 5

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

BEST COPY AVAILABLE

1 rgsr

3752

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

- v s -

72 Civ. 2498

LOCAL 14 INTERNATIONAL UNION OF
OPERATING ENGINEERS, et al.

December 12, 1974

[10:30 a.m.]

[Case called.]

MR. DEVORKIN: I am not sure if I should introduce myself after this hiatus.

THE COURT: I don't think that is necessary.

MR. DEVORKIN: I think if we could take care of a couple of housekeeping matters before we put on the final rebuttal witnesses we will be in good shape.

THE COURT: All right.

MR. DEVORKIN: Your Honor will recall that plaintiff's Exhibit 91 was an alphabetical list of Local 14 members with their average earnings for the three-year period and we had made some markings beside each name to indicate at that time as we knew it the license status as it were of those individuals and we have had an opportunity to continue to review the records of the City of New York and I would like to withdraw 91-A and B and offer instead --

139

1 which were simply descriptions of what was on that list,
2 and offer instead a stipulation between Mr. Kennedy on
3 behalf of Local 14 and the plaintiff, which essentially
4 states that the symbols that now appear on the list by vir-
5 tue of our updating is correct as we know it and the
6 stipulation will speak for itself.
7

8 THE COURT: Received.

9 MR. DEVORKIN: That will be 91-A.

10 [Plaintiff's Exhibit 91-A received in evidence.]

11 MR. DEVORKIN: We would also like to offer what
12 has been marked as Plaintiff's 104 for identification, which
13 is the Equal Employment Opportunity report EEOQ and its
14 instruction sheets, essentially -- I have supplied a copy
15 to counsel -- and 105, which is the EEOC Local Union
16 report EEO3 with its instructions.

17 I offer these really in conjunction, your Honor,
18 with what I have marked as Plaintiff's 106-A, 106-B and
19 107-A, 107-B and 107-C.

20 106-A is Local 14's EEO3 report for 1970 and
21 106-B is Local 14's report for 1972. 107-A is Local 15 --
22 A through D -- report for 1970, 107B is its report for
23 1972 and 107-C is its report for 1973.

24 THE CLERK: Any objection?

25 MR. KENNEDY: I have no objection.

THE COURT: Received in evidence.

[Plaintiff's Exhibits 104 and 105 received in evidence.]

[Plaintiff's Exhibits 106-A, 106-B received in evidence.]

[Plaintiff's Exhibits 107-A, 107-B and 107-C received in Evidence.]

MR. DEVORKIN: I may have one exhibit this afternoon, but for now that is our documentary record, except what comes in through our witnesses.

MR. BRADY: Excuse me one moment, your Honor.

[Pause.]

MR. GLASSMAN: The Government calls James McNamara. J A M E S F R A N C I S M c N A M A R A, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. McNamara, by whom are you employed?

A I am employed by the City of New York as Director of Contract Compliance in the office of the Mayor.

Q How long have you been so employed?

A I have been employed in the Office of Contract Compliance for two years. I have been Director of Contract Compliance since October 1973.

1 Q Could you describe for us your duties as Director
2 of the Office of Contract Compliance?
3

4 A Basically my duties have to do with enforcement
5 of mayoral executive orders that deal with equal opportunity
6 and anti-discrimination in the construction industry.
7 Any contractor who is doing business with the City of New
8 York must observe certain mayoral executive orders,
9 specifically Executive Orders 71 and 20 and those orders
10 set forth requirements for employment of minorities and
11 minority training on construction sites.

2 Q Do you have any duties in regard to minority
12 referral sources?
13

14 A Yes. Our office also includes a unit dealing
15 with building trades, training programs so that I supervise
16 a contract between the City with an organization known as
17 the Recruitment and Training Program, Inc. who recruit
18 minority men interested in careers in construction.

19 Q What previous position have you had with the City
20 of New York?

21 A My previous work before Contract Compliance was
22 as Director of Building Trades Training Programs. I held
23 that position from July 1969 until I became Director of
24 Contract Compliance.

25 Q Could you describe for us your duties in that

position?

A As Director of Building Trades Training Programs my primary function was to utilize the City's neighborhood manpower centers and to work with the recruiting training program in administering whatever opportunities may exist in the building trades in recruiting and referring men to the industry for employment.

Q How did the City first get involved in minority training programs?

A Well, in terms of my own work with the City, in 1969 the City was concerned about meeting Federal guidelines in terms of grants to build housing and other projects in ghetto areas that were known as Model Cities areas. The guidelines required the employment and training be extended to residents of those ghetto areas so we were very concerned about our eligibility.

My assignment was to try to work out a training program with the building trades that would enable us to meet the conditions imposed upon us by the HUD Federal agency in connection with construction in Central Brooklyn Model Cities. That's basically Bedford Stuyvesant, Brownsville, East New York.

Q Who did you meet with in order to set up this program?

1
2 A The City dealt with the leadership of the building
3 trades industry. At that time the current Secretary of
4 Labor, Peter J. Brennan, was president of the Building
5 Trades Council, and his council established a special
6 subcommittee of unions who we dealt with. I participated
7 through the mechanism of the Building Trades Employers
8 Association at one point, but it was primarily the Building
9 Trades Council that we worked with.

10 Q What type of a program or plan was initially
11 set up?

12 A After a period of negotiations we agreed that in
13 the Brooklyn Model Cities area, which was our immediate
14 concern, that the unions would go along with the program
15 that involved the hiring and training of one minority
16 individual for every four journeymen on a craft by craft
17 basis. Those men were called trainees.

18 Q Was this trainee an entry level type position
19 or could you describe it for us?

20 A Yes. The trainee is an entry level position
21 analogous to an apprentice, the distinction being that the
22 trainees were to be minority people only, they would be
23 individuals who did not qualify for the regular established
24 apprenticeship programs.

25 For example, they might not have the high school

1 diploma. They could be over the apprenticeship age. They
2 could be men who had some prior experience and, therefore,
3 should not start as first year apprentices, but it was
4 basically an entry level position to lead the category
5 of journeyman.
6

7 Q In 1969 was that program exclusively in Bedford
8 Stuyvesant?

9 A Yes, it was. In Central Brooklyn Model Cities,
10 which included Bedford Stuyvesant, East New York and
11 Brownsville, as I can recall.

12 Q Were there any Operating Engineer trainees at
13 that time?

14 A I don't recall that we were ever able to get
15 any trainees cleared through the Operating Engineers union
16 for that program.

17 Q Were any attempts made to get operating engineer
18 trainees?

19 A There were some attempts. I believe one of
20 the construction companies, under contract to Local 15 --
21 there was correspondence with them, but we were never able
22 to get a trainee cleared.

23 Q After this Model Cities project were you or your
24 office in any way involved in meetings to set up the New
25 York plan for training?

1 A Yes, we were.

2 Q Could you tell us how that came about?

3 A Well, the City and people in the industry con-
4 cluded that if we could have a successful minority training
5 program in Brooklyn Model Cities we should explore extending
6 that to all of the five boroughs of the City for all types
7 of construction. Mr. Brennan was agreeable to exploring
8 that with the City and with the State of New York and we
9 had a series of meetings and negotiations basically in
10 the year 1970 and they culminated in the adoption of what
11 became known as the New York Plan. I believe that was
12 signed on December 10, 1970.

13 Q Were any members of Local 14 or Local 15 in those
14 meetings?

15 A There were people who came from the operating
16 engineers. As I recall, the staff director of the Board
17 of Urban Affairs, Mr. Donald Rodgers, was once with Local
18 15, I think recording secretary. I believe his assistant,
19 Jim Dooley, James Dooley, came from the Operating Engineers
20 and at a later point, a much later point in time I believe
21 there was a third person formerly an operating engineer,
22 Richard Rodgers, but that was much later.

23 Q Were there any other representatives of the Board
24 of Urban Affairs at those meetings?
25

1
2 A Yes, at different occasions their chairman at
3 that time, Thomas Broderick, Jr. , I believe.

4 Q What was the initial number of trainees in the
5 New York plan?

6 A I believe the industry offered an agreement for
7 a maximum of 800 minority trainees for the first year of
8 the program.

9 Q Do you know how that number was set?

10 A The number of 800 was something that the
11 Building Trades Council authorized its president, Peter
12 J. Brennan, to agree to and that maximum number of 800 was
13 subsequently agreed upon by all the parties.

14 Q Did the New York Plan apply only to the public
15 sector or was private sector work to be included?

16 A As written and signed, the references are to
17 public sector work, but there was an understanding that
18 the industry would make every attempt to extend it to
19 major parts of the private sector. I remember there was
20 mention made of banks, New York Telephone, Con Edison,
21 department stores. Major private institutions were to be
22 added in later.

23 Q Was the plan so extended to the private sector?

24 A No. To my knowledge we were never able to get
25 it extended into the private sector.

Q What was the meaning or effect of New York City's participation in the New York Plan in terms of contract compliance?

A Well, the City then issued an executive order mandating that all contractors building for the City of New York would have to hire minority trainees referred through the mechanism of the New York Plan and it became a matter of contract obligation in order to be awarded a construction contract.

Q Have you or your office had responsibility for reviewing the effectiveness of the New York Plan? Particularly I am talking about the placement of operating engineer trainees.

A Until the point that the City withdrew from participating in the New York Plan our office was responsible for recruiting, orienting, referring trainees for employment, following up by visiting sites to see how they were employed, informing contractors of their obligations and where they were not observed calling contractors in to get them into compliance.

Q Did you actually visit construction sites to verify the existence of trainees?

A Yes. We have a field staff and part of their duties would be to visit construction sites to verify the

employment of these trainees, as well as other minority men required by the City.

Q Does this checking include a checking by race?

A Yes. They would verify the numbers of minority men as part of their duties.

Q Did it also include a checking by craft or trade?

A Yes. It was done on a contract by contract basis trade by trade evaluation.

Q Do you have field representatives who reported this information back to you?

A Yes. They would submit written reports indicating what the results of their site visits were.

Q Do they review both the quality and quantity of trainee assignments?

A Yes. The immediate emphasis is on the quantity of men employed. They would have the secondary responsibility, wherever feasible, to try to get an indication of what type of training, to also try to talk to the trainees if it didn't interfere with the production to get an idea if they had any problems and how things were going in general.

Q Could you describe the nature of the reports you received with respect to the quality of operating engineer trainee assignments?

2 A Well, the general situation with operating engineers
3 is that the training on the site was very, very unstructured.
4 It was sort of a catch as catch-can situation. We had
5 few, if any, trainees really involved in getting training
6 in handling heavy equipment. Most of them were relegated
7 to relatively unskilled titles, originally oilers.

8 Subsequently most of them were routed out as
9 survey trainees and mechanics helpers, but the nature of
10 the training was very catch as catch-can.

11 Q Is there any training other than on the job
12 training afforded to these operating engineer trainees?

13 A A number of them, and I would estimate a minority
14 of the trainees had been receiving some off-site training,
15 generally at a facility maintained near Kennedy Airport
16 by the industry, but that would only be a small portion of
17 the total trainees. Most of them were not extended any
18 formal classroom orientated instruction or any off-site
19 instructions, as far as we could determine.

20 Q Were operating engineer trainees assigned to Local
21 14 or Local 15?

22 A Well, when the New York Plan agreement was entered
23 into, it was just a general trade designation, operating
24 engineers. We were under the assumption that it would apply
25 to both locals 14 and 15, and in fact City contract

specifications had some titles in there that would belong to Local 14 as well as 15. But in practice what has happened is we have never been able to clear, as far as my office records indicate, any minority trainees for any categories in Local 14. They were all assigned to Local 15, as best I can recall.

Q Is there any particular method by which operating engineer trainees are assigned to a particular job ?

A Well, if the interview of the trainee, if his application at the interview indicated some prior experience in a particular specialty of that local we would attempt or recommend to the people administering the New York Plan when we participated in it that that individual be assigned for further training in that area.

Some of the men had no previous trade experience in terms of operating engineers, so in those cases we would take or accept whatever opening was cleared through the union regardless of the category.

Q Is the City of New York still a signatoree to the New York Plan?

A No. The City withdrew from participation in the New York Plan close to two years ago.

Q Do you know the reasons for the City's withdrawal from the New York Plan?

2 A Well, the Mayor of the City, in announcing his
3 withdrawal, said the City withdrew because it failed to
4 meet its objectives. It wasn't successful.

5 Q Did he describe in what respects the City felt
6 it was not successful?

7 MR. KENNEDY: Objection, your Honor, not unless
8 he is talking from the documents.

9 Q If you know from your personal knowledge.

10 A Yes. The City's records of training employment
11 indicated that the industry did not meet its commitment
12 to have 800 men in on the job training in the first year
13 of the program.

14 Q Did the city take any further contract compliance
15 steps when it withdrew from the New York Plan?

16 A When the City withdrew from the New York Plan
17 it then promulgated new affirmative action regulations
18 that became operative in July 1973. It issued rules and
19 regulations amending Executive Order 71 that set forth
20 minimum ranges of minority employment on a craft by craft
21 basis with annual stepups in those acceptable ranges over
22 a period of time. The ultimate goal of the program was
23 that the industry should employ journeymen in roughly the
24 same proportion as minorities are in the population at
25 large.

1 Q Was there any particular figure that the City
2 has used as a goal based on population?
3

4 A The City, in submitting its rules and regulations
5 for approval to the United States Department of Labor,
6 used a figure of approximately 38% as being the minority
7 population in the five Boroughs of New York.

8 Q Does this apply to the operating engineers trade?

9 A It would apply to every trade including the
10 operating engineers.

11 Q Is New York City presently attempting to implement
12 this Executive Order?

13 A Yes, we are.

14 Q Who has the responsibility for implementing and
15 monitoring that order?

16 A My office, the Office of Contract Compliance.

17 Q With respect to the operating engineers, have
18 all contractors met this goal?

19 A No, they have not.

20 Q What efforts does your office make to see that
21 the goal is achieved?

22 A When our site inspectors report violations of
23 City regulations in terms of minority hiring of operating
24 engineers, or any other trade for that matter, we call
25 the contractor in to a contract compliance meeting. That

meeting is a first step in an informal conference to try to get him in compliance. We notify the industry of these meetings through the Board of Urban Affairs, which represents labor and management.

Q What type of information do you request from these contractors?

A Well, we first ask them if they have any dispute over what our survey of employment revealed and if there is none we ask them what steps have they taken to get into compliance, what good faith efforts have they made.

Q What do you mean by good faith?

A Well, we would define a good faith effort as an employer doing several things. One would be that he would document and show us that he has tried to employ these men.

For example, if we are talking about a failure to employ minority operating engineer trainees we would ask him for some evidence that he has been in touch with the New York Plan; that he submitted written requests for assignment of these trainees to his project. We would ask him if he followed that up; has he been in touch directly with the local unions of the operating engineers. We would ask him if he has tried to use other sources if he couldn't get the men through those.

Q What kind of responses have you gotten from contractors relating to operating engineer trainees and operating engineer journeymen?

A The pretty standard responses that they are unable to get the men cleared either through the New York Plan, Inc. Office or it breaks down at the local union level.

Q Have you met with any representatives of the New York Plan recently to attempt to get more operating engineer trainees?

A Yes. As I indicated we generally notify them of all these meetings and as a rule they send down representatives. We have had meetings going on every -- you know, fairly continuously. We had a meeting in October, for example, with one of the major contractors in this industry, Peter Kiewit.

Q Did this meeting include any particular representatives of the New York Plan?

A Yes. Mr. Claudius Johnson, who is the Acting Director of the New York Plan.

Q Did Mr. Johnson say anything in particular at that meeting?

A Well, he criticized our office for putting the onus on the contractor for getting these minority operating

engineers employed and he indicated the problems with the local union.

MR. BRADY: I am going to object to this, your Honor. This is the second or third time. This is all hearsay of what the contractors had told him and what Mr. Johnson told him. I think it should be stricken from the record.

MR. GLASSMAN: These are reports of this man's office of operations and meetings that took place.

THE COURT: I will take it. I hope it is not repetitive. I don't remember all of this having come in before.

Q. Are training positions actually written into the New York City bid conditions for contracts?

A. Yes. Before any contract is advertised or bidding City agencies are required to send to my office an estimate of the amount of manpower that will be needed on that project on a trade by trade basis and the number of weeks for each trade that they estimate will be required to build the job. Then we -- our office then gets back to the particular agency with recommendations as to how many trainee positions should be actually written into the bid specifications. We use the rule of thumb of one minority trainee for every four journeymen where practical.

Q Do you know approximately how many operating engineer trainees are currently employed on publicly financed work in the City?

A Our most recent reports indicate somewhere in the area of 60 to 70 operating engineer trainees currently employed.

Q Do you know how many positions of operating engineer trainees are currently available?

A We have written into contracts several hundred training positions. I would have to go back and survey each contract to give you an exact answer. My estimate is that for every trainee out there there could be perhaps twice as many if the trainees were permitted to be employed.

MR. BRADY: I am going to move to strike that, your Honor, his estimates and he has no recollection. He was asked a specific question about the operating engineer trainees and I don't think he answered that and I move to strike.

MR. GLASSMAN: We will follow that up with documentation, your Honor.

THE COURT: I would prefer the documentation.

MR. GLASSMAN: I will go into that right now.

2.1am

1 1 jhsr McNamara - direct 3771

2 Q Mr. McNamara, I show you what I have marked as
3 Plaintiff's Exhibit 108 and ask if you could identify and
4 describe that document for us.

5 A Yes. This is a report from one of the members of
6 my staff to indicate the number of training positions that
7 are written into mayoral and non-mayoral contracts for
8 operating engineer trainees.

9 Q Can you describe for us the headings on the
10 succeeding pages, what they mean?

11 A Yes. The headings, first of all, list the project
12 involved --

13 MR. KENNEDY: Objection, your Honor. If Mr.
14 Glassman is going to offer the document in evidence I then
15 have no objection to the witness reading from it. But as
16 I understand it, he was simply asked to identify the
17 document and now the witness is reading from it.

18 MR. GLASSMAN: No, I am asking for an explanation,
19 and as soon as I offer it I will give a copy to Mr. Kennedy,
20 after the explanation of the document.

21 THE COURT: Why don't you offer it in evidence and
22 then he can explain. It has been sufficiently identified.

23 MR. GLASSMAN: I offer the document in evidence.

24 [Pause.]

25 MR. KENNEDY: I have no objection, your Honor.

MR. BRADY: No objection.

THE COURT: Received in evidence.

[Plaintiff's Exhibit 108 received in evidence.]

Q Mr. McNamara, referring to what has been marked as Plaintiff's Exhibit 108 now in evidence, and referring to the second and succeeding pages, could you just describe for us the meaning of the various headings called Site and Training Assignment.

A Yes. This report is broken down into the actual Government agency involved in construction. So for example, the first set of specifications are all for contracts under the Environmental Protection Administration of the City.

The first column would identify where that site is, the address, and then the heading on the far right, Training Assignment, that would enumerate the number of minority operating engineer trainees and number of weeks. So that if it says, for example, 4 for 50, that means 4 minority operating engineer trainees for 50 weeks of training per man.

Q Does this list represent all of the slotted operating engineer trainees?

A No, because, first of all, this survey was compiled in October 1, 1974, and we have additional slots.

Also it would not include some major state agencies,

such as Battery Park City, which is basically an independent but State controlled agency, it would not include the State Housing Agency as well. There may be other omissions. It's primarily City and City agencies plus a few State agencies when the City was involved in the program. It is not complete.

Q Would it include a project like Starret City?

A No, it would not.

Q Is that a city or a state project?

A Starret City was a major housing project of the State Housing and Community Development Agency, if I have it right. It's a State project.

Q Does it include subway work in the City?

A Yes, the New York City Transit Authority would be included in here.

Q Does it include highway work in the City?

A Yes.

Q It does include water pollution work as well?

A Yes, water pollution work would be basically covered on the first heading, Environmental Protection Administration.

Q Does the City goal in its executive order, the one you described based on population, does that apply only to trainees, or what does it apply to?

1 A No. The ranges that are in effect now apply to
2 any classification of minority manpower, whether that be
3 a journeyman, apprentice, a helper or a trainee. The
4 contractor can meet his minority manpower obligations
5 through any of those categories.
6

7 However, the goal of the program is to have
8 journeymen roughly equal to the minority population, which
9 we calculated at 38%. That would be by July 1, 1978.

10 Q I believe you described some earlier duties of
11 yours relating to the recruitment and training program.
12 Could you describe for us any relationship of that program
13 to the operating engineers?

14 A Yes. I monitor and supervise that project
15 between the City and the Recruitment and Training Program
16 Incorporated. To relate it to the operating engineers is
17 rather difficult, because they recruit minority apprentices
18 as the major thing and this union does not accept appren-
19 tices, black or white.

20 Q Have there been any recent efforts to set new
21 numerical goals under a voluntary industry plan in which
22 New York City would participate?

23 A Yes. I have been involved in meetings since
24 early this year. Perhaps a dozen meetings or so have
25 been held with the building trades industry.

Q Who actually participates in those meetings?

A The City's lead negotiator is Deputy Mayor Paul Gibson, Jr., who is my immediate chief, myself and other staff people from the City, the State of New York is represented, and the Board of Urban Affairs, which is a labor-management institution, plus the president of the Building Trades and Construction Council, Mr. Thomas Tobin, and various lawyers and management, including one gentleman who isn't here right now, Robert Fink.

Q Have any new goals been suggested by the industry representatives on behalf of the operating engineers?

A No, no goals have been put forth at this time for any trade. The question of goals and timetables, in other words, numbers and so forth, has not been resolved.

At an earlier point in the negotiations an observation or a suggestion was made from the industry that unions who are involved in court and in litigation should not perhaps be involved in the assignment of goals, that that should be something that the Courts would deal with. That's not the position of the City and I don't know if the industry still sticks to that.

MR. GLASSMAN: I have no further questions of this witness, your Honor.

MR. KENNEDY: Your Honor, may we have a brief

recess. We did not know who the witness was who was coming up today.

THE COURT: All right.

[Recess.]

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. McNamara, do you have in front of you Government's Exhibit 108?

A Yes, sir.

Q I call your attention to the first page, where it says Total Slots 263. Are those journeymen slots, sir?

A No. Those slots refer to trainee --minority trainee positions as operating engineers.

2.2 Q What is that figure based on, sir?

A That figure is based on the number of training positions written into Government contracts for minority operating engineers. The method of computing those slots was to assign one minority trainee for every four journeymen in a particular craft on a craft-by-craft basis.

Q So, for instance, where you see H.D.A.22, that would mean that on that particular project there would be 88 journeymen engineers, is that correct, sir?

A Let me just follow what you are referring to. Are you looking at Page 1, where it says H.D.A.?

1
2 Q Yes, sir.

3 A No. What that means is -- H.D.A. is an entire
4 agency. In this instance it's the Housing and Development
5 Administration. It could involve perhaps 15 or 20 projects
6 under the Housing and Development Agency. It's a cumulative
7 figure.

8 Q For what year, sir?

9 A These trainee slots would go back to the effective
10 date of the training executive order. They would have to
11 be no earlier than September of 1970, because the mayoral
12 executive order was promulgated in that year.

13 Q That would mean that some of those projects
14 for H.D.A., for instance, have already been completed,
15 isn't that correct?

16 A Yes, it would.

17 Q Does it also include projects for 1975 ?

18 A It would include projects that are in the ground
19 now and it would include some that haven't commenced work.

20 Q That have commenced work?

21 A That have not commenced work.

22 Q Does it also include those projects which the
23 City has decided to scrap, for instance?

24 A Frankly, I would have to go back and ascertain
25 that.

Q Are you familiar, Mr. McNamara, with what the City's budget is for 1975 for construction?

A The City's capital budget for construction as announced recently, yes.

Q What is it, sir?

A As I recall, it was only \$5,100,000 of new construction money for the capital budget year commencing July 1, 1975 through June 30, 1976 .

Q What was it in 1974, sir?

A I honestly don't recall.

Q Do you recall whether it was higher or lower?

A Oh, substantially higher, no question.

Q Isn't it a fact, Mr. McNamara, that for those projects that will have to be scrapped these jobs that appear on Exhibit 108 and the positions for operating engineers will have to be scrapped as well? Isn't that correct?

A As I said before, we would have to go back and see the latest developments in the City's capital budget- and how it affects any of these training positions. I would be glad to do that.

Q Again with respect to Exhibit 108, Mr. McNamara, the pages that follow the first page, are they breakdowns of the projects really listed on the first page?

1
2 A The first page is an overview of the following
3 pages, yes.

4 Q Could you tell me, Mr. McNamara, why is it that
5 certain of the notations under Training Assignment indicate
6 the type of work whereas others do not?

7 A Yes. In some cases the agencies awarding the
8 contract would give us a cumulative total of all of the
9 men to be employed in the category of operating engineer
10 and they did not attempt to break it down into a half a
11 dozen or so particular categories. In other cases we
12 had more detailed information and in those cases we would
13 deal with it on a category basis.

14 Q For instance, on the second page, where it says
15 at the top Sewer in Jerome Avenue, is that project in being
16 right now, sir?

17 A I would not be in a position to tell you that
18 today. We have records that would indicate the status of
19 it in more detail. I do not have them with me this
20 morning.

21 Q Is it possible, Mr. McNamara, that that job was
22 completed and that there were 4 for 50?

23 A As I told you before, there are projects on here,
24 because this is a cumulative total, there are projects
25 on here where the trades would have been completed. The

2 answer is yes.

3 If your question is were the four training
4 positions actually filled, my response would have to be
5 that would be in very few cases that we were able to get
6 those positions filled.

7 Q But there were cases that they were filled, is
8 that correct?

9 A Oh, yes.

10 Q Do you know how many, sir?

11 A We know that approximately at this time there are
12 60 to 70 operating engineers, trainees, working on various
13 sites in the City of New York. We know from reports that
14 we received from the New York Plan, until that point where
15 the City was still involved and receiving reports, how
16 many were placed in that trade, and I think I have a copy
17 of such report with me. My recollection is that the
18 operating engineers were assigned a total of 73 training
19 positions for the first year of the program. My recollection
20 is that they in fact did not have that many men in training
21 at the end of one year of the program.

22 Q How many did they have, Mr. McNamara?

23 A The report I have indicates as of June 1, 1973
24 64 men actually employed in training, an additional number
25 received journeymen's books about 8, I believe.

Q In other words, out of the quota of 73 for the operating engineers they filled 64 of them, is that what you are telling me?

A No, no, no. I am indicating that through the entire life of the program, through June 1, 1973, at that point there were 64 men employed, an additional 8 who had received journeymen's books, there would be an additional number of men who dropped out or quit for whatever reasons, there would be 2 men who were awaiting re-assignment. But that would cover the entire activity from when the agreement was entered into on December 10, 1970 through June 1, 1973.

Q Let me see if I understand you, Mr. McNamara. I think you told me that the quota for the operating engineers was 73, is that correct, for the first year?

A That's my recollection, yes, sir.

Q Was that quota increased at all in the second year or the third year?

A That quota held through December of 1973. The city was then no longer a participant, but the trades' obligations overall were then increased to a grand total of 1,000 slots as opposed to the original 800.

Q That's for all of the trades though?

A That's for all of the trades. I do not have

all the figures with me, but I would assume, because this was true across the board, that every trade then had a small number of additional trainee assignments assigned to those trades to make up the difference from the original 800 to the new total of 1,000.

2.3am

Q In 1970 how many minority trainees were working on jobs that were operating engineers?

A Calendar year 1970? I don't have those records with me, sir.

Q How about 1971?

A I do not have with me annual breakdowns for the operating engineers or any other trade. We do have records in our office though that we could go back and obtain.

Q But you are sure that it was not 73 that were working, is that correct?

A Yes.

Q Where did you come up with the figure of 64?

A From a report we received from the New York Plan for Training Incorporated. We were participants and they would supply us with data.

Q That would mean that in one of those calendar years up until the City withdrew from the New York Plan there were 64 operating engineer trainees working on these

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

13 jhsr

McNamara - cross

3783

projects?

A There were 64 working at the time that report was compiled. June 1, 1973 is the date of the report.

Q And the quota was at that time, to the best of your recollection, 73?

A That's my recollection.

Q I only have one other question, Mr. McNamara. I note that next to some of the figures in the column Training Assignments there appears the notation "(Hoisting)". What does that notation mean?

A Of course, I don't have a contract in front of me, but I see it's the Yankee Stadium modernization, for example, as one of them. I would assume it would have had hoisting equipment.

Q Are you familiar, Mr. McNamara, with the licensing requirements of the City of New York for operating hoisting equipment?

A Not in great detail, but I know in general there is a licensing requirement to actually operate the equipment. That doesn't mean though that you can't have other people in and around that equipment to learn the trade as helpers, oilers, maintenance men, et cetera.

Q But you can't touch the equipment though, is that correct?

1
2 A I believe you could not actually operate the
3 equipment, yes.

4 MR. KENNEDY: I have no further questions.

5 THE WITNESS: This is a training position though.

6 MR. KENNEDY: Thank you.

7 CROSS-EXAMINATION

8 BY MR. BRADY:

9 Q Mr. McNamara, you said you were familiar with Mr.
10 Claudius Johnson. To the best of your knowledge, would
11 Mr. Johnson be very familiar with the number of trainees
12 for all trades under the New York Plan?

13 A Mr. Johnson's office, yes. The answer is he
14 should know how many trainees are out there.
15
16
17
18
19
20
21
22
23
24
25

T3

1

gpl

McNamara-cross

3785

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Did Mr. Johnson ever advise you that in fact the operating engineers had exceeded their quota or goal under the New York Plan For Training? Did he ever advise you of that?

A Not in those words, no. He has indicated several unions refused to clear any trainees because those unions have taken a position that they were assigned a number and that at the time these discussions with Mr. Johnson would have taken place they felt that they had met that number and I think that may relate to the operating engineers as well.

Q That in fact they met that number and exceeded it?

A That was Mr. Johnson's contention, yes.

Q You say that there were eight people that got their union books. Isn't it a fact that 15 people have gotten books in Local 15 through the New York Plan For Training?

A The figure of eight that I cited was based on a report involving when the City was still participating, and that was June 1, 1973. I would not know how many more besides the eight in that report obtained books.

Q As far as the training that was under way for the operating engineers -- and by the way, were all these

gp2

McNamara-cross

trainees assigned to Local 15, do you know?

A My best recollection is that the contracts called for assignments to some Local 14 occupations, but in fact we are unable to get the men accepted by Local 14, so what I am saying is as far as I can recall virtually all, if not all, were under Local 15 jurisdiction.

MR. BRADY: I am sorry, I think I started a question and I can't recall what the question was.

(Record read.)

Q The training that these people received, are you yourself familiar with the training; have you been on the jobs and seen it?

A I have been on some sites, but I rely primarily on staff who visit them on a daily basis.

Q Have you been advised by your staff that in fact the Local 15 trainees are learning the welding trade on the job?

A I know that is an occupation within Local 15. I think that we may have some men learning welding up on the North River Water Pollution Project, but I would have to verify that.

Q You are not sure. Have your investigators told you that in fact people are learning to operate equipment under Local 15's jurisdiction?

gp3

McNamara-cross

1
2 A Yes, but not in any systematic inclusive work.
3 It is a very haphazard thing. Some trainees are learning
4 and some are just standby men in effect.

5 Q Whenever they get the chance aren't they given
6 the opportunity to get on that equipment? Given the dangers
7 involved in construction equipment and in construction jobs
8 it is rather difficult, is it not, to have a trainee
9 operate equipment; do you know that?

10 MR. GLASSMAN: Objection, your Honor. I don't
11 quite understand the question. I am not sure what Mr. --

12 MR. BRADY: Maybe the witness understands it.

13 THE COURT: It doesn't deal with specific
14 things.

15 MR. BRADY: Fine, your Honor.

16 Q I think you answered that, that people are in
17 fact learning to operate construction equipment under Local
18 15's jurisdiction; isn't that so?

19 A Some of them are, but a great many of them are
20 not receiving that instruction at the union training
21 facility, which is an off-site construction --

22 Q That's another question, isn't it? I am
23 talking about on-the-job training for the New York Plan.

24 Did your investigators ever advise you that
25 trainees under Local 15's jurisdiction were learning to

1
2 operate cherrypickers?

3 A Yes, we have received information that certain
4 small pieces of equipment have involved our trainees.

5 Q Did they include front-end loaders and bull-
6 dozers?

7 A I believe we have a few trainees in that area.

8 Q And then there are a number of trainees, are
9 there not, who are receiving training as mechanics, isn't
10 that so?

11 A I believe there are some assigned to mechanics'
12 categories.

13 Q You spoke about the recruitment and training
14 plan. Are you familiar with Mr. Donald Raffles?

15 A Very well. He is an executive in the recruiting
16 and training program and we confer from time to time.

17 Q If I understood you correctly, you said that
18 recruitment and training is only concerned with obtaining
19 apprentices. Was that your testimony?

20 A No. That is one of their obligations.
21 Another obligation is they also recruit men as trainees
22 for programs that the City administers, namely, the program
23 with the Electrical Workers Union and the Plumbers Union.
24 In addition to apprentices and trainees they also recruit
25 men who already have journeymen qualifications and they
attempt to get those men placed into unions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp5

McNamara-cross

3789

Q Were you familiar, sir, with an agreement between Local 15 and Recruitment and Training whereby Local 15 has agreed to take into membership any qualified journeymen that RTP can find?

A I am not aware or I haven't seen any written agreement to that effect. I know that in general certain commitments were made by the building trades leadership, that they would attempt to place men, but in answer to your question, no, I have not seen any written agreement between Local 15 and RTP.

Q I am just talking about Local 15. You are not familiar with it?

A No, I have not seen it.

Q You said you didn't see it. Are you familiar with it at all?

A I am not aware of its existence.

Q Under the original New York Plan did New York City have any financial commitment or obligation?

A Yes. The City of New York had financial commitments to the New York Plan which involved matching the State of New York on a 50/50 basis for funding of that program. In addition to that, they had commitments to fund the Recruiting and Training Program to recruit men.

In addition to that they had funding commit-

1
2 ments to reimburse employers for a portion of the trainees'
3 wages and certain types of jobs.

4 Q Did the City live up to its commitment insofar
5 as funding the New York Plan?

6 A The City's funding to the New York Plan was
7 lived up to dollar for dollar for the time that the City
8 of New York was in the Plan with New York State.

9 Q How much money was put in, do you recall?

10 A Cumulatively, the Board of Estimate passed
11 training contracts in excess of \$2,000,000. The contract
12 for the New York Plan was funded with the City to New York
13 State. I would have to look up the figure. Frankly, I
14 don't have it with me.

15 MR. BRADY: I have no further questions.

16 REDIRECT EXAMINATION

17 BY MR. GLASSMAN:

18 Q Mr. McNamara, I believe you just testified
19 about some conversations with Claudius Johnson. When was
20 your office's most recent meeting with Mr. Johnson, if you
21 know?

22 A It would be hard for me to pinpoint because
23 we have frequent meetings. I have seen Mr. Johnson in
24 my office in the last several weeks or so. I am sorry I
25 can't be more specific.

Can you identify that for us?

Q What is the date of that?

A The date of this report is October 18, 1974.

I am sorry, I don't have additional copies of
s time, but I would be glad to show it to you.

MR. BRADY: I join in the objection, your Honor.

earsay.

Q Mr. McNamara, is this a report prepared in the normal course of business in your office?

A Yes, it is. It is a routine report, yes.

MR. KENNEDY: Mr. Glassman, it was an objection to the contents of the thing. I am not saying that it is not a report made in the regular course of business, but

there are statements contained in there from people who are not here.

MR. GLASSMAN: We submit the document purely as a report of a meeting and not for the truth of the statements therein.

MR. BRADY: I object. It is a recitation of a meeting and opinions given by people at the meeting.

THE COURT: Let me see it.

You are going to use this to refresh his recollection of when he last had a meeting with Mr. Claudius Johnson and I have no objection to the document being used for that purpose, but I will sustain the objection to its admission.

Q Mr. McNamara, does that refresh your recollection as to recent meetings with Mr. Johnston?

A Yes, it does.

MR. BRADY: If your Honor please, that doesn't even relate to a meeting with Mr. Johnson. It is a report to Mr. Johnson about another meeting -- it is a report, rather, to Mr. McNamara about a meeting Mr. Johnson had with someone else.

MR. GLASSMAN: I will withdraw it.

THE COURT: It doesn't refresh his recollection, then.

1 Q Mr. McNamara, you referred in your earlier
2 testimony to a report you received from the New York Plan
3 relating to the Operating Engineers Goal of 73. Do you
4 have such a report with you?

5 A Yes, sir, I believe I do.

6 Incidentally, I stated before that I did not
7 have the list of funding contracts that the City put into
8 training programs with me. I find that I do, if that is of
9 any value.

10 Q May I see that report, please?

11 A (Handing.)

12 MR. GLASSMAN: I would like to mark that as
13 Plaintiff's Exhibit 114 for identification and offer it
14 in evidence.

15 MR. BRADY: I have no objection, your Honor.

16 MR. KENNEDY: I have no objection.

17 THE COURT: It is received in evidence.

18 (Plaintiff's Exhibit 114 received in
19 evidence.)

20 Q Mr. McNamara, in looking at that exhibit can
21 you explain to us if or where that has any reference to
22 the original Operating Trainee Goal of 73 or a lower figure
23 actually achieved which you testified to?

24 A The last page is a spread sheet. It is
25

labeled "Table 3." It lists all trades including operating engineers. The first numerical column, "73," relates to what the minority goals were for that particular trade.

THE COURT: It shows 82 actually placed, does it not?

THE WITNESS: The next column shows 92 actually placed, yes.

Q Could you explain for us the number 64?

A The number 64 indicates the number of men currently working. The figure 92 would include 18 men who dropped out of the program.

Just so we understand definitions --

MR. KENNEDY: I don't think there is a question on the record, your Honor, unless the witness is going to testify in narrative form.

THE COURT: I don't want to shut him off if he has something to ask.

Q Can you describe for us the meaning of the number 10 on the chart?

THE COURT: I think they speak for themselves,
don't they?

A Is there a particular column which requires an explanation that is not on that chart?

MR. KENNEDY: Objection, your Honor.

1
2 MR. BRADY: Oh, come on.

3 MR. KENNEDY: That was a nice try, but it didn't
4 work.

5 THE WITNESS: I did want to make a point.
6 The point that I wanted to make is that a man -- a training
7 goal means by definition that a man is actively employed
8 in training on a construction site. It does not allow
9 for the fact that more men may have been referred, some
10 of them may have been rejected, some of them may have quit
11 of their own volition. We consider the goal to mean how
12 many men are actually currently employed in on the job
13 training and that is what the figure 64 relates to.

14 THE COURT: What does the figure 92 relate to?

15 THE WITNESS: The figure 92 will also include
16 the 18 men who quit or were fired or for whatever reason --
17 they may have gone into the Service, whatever the particular
18 circumstances were, but they should be replaced by another
19 trainee, so that we do not give credit for the number who
20 worked for one day. We only give credit if they are
21 actively employed in the program. So the 92 includes 18
22 dropouts, two men who are currently awaiting reassignment
23 and it includes the eight men who became journeymen who
24 were no longer trainees.

25 MR. GLASSMAN: I have no further questions,

your Honor.

MR. KENNEDY: I have no questions, your Honor.

MR. BRADY: Nothing further, your Honor.

THE COURT: Thank you.

(Witness excused.)

MR. GLASSMAN: The government calls Kenneth Smallwood.

KENNETH WELLS SMALLWOOD, called as
a witness on behalf of the government, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Smallwood, by whom are you employed?

A I am employed by the United States Environmental
Protection Agency.

Q In what capacity are you so employed?

A I am the Director of the Civil Rights and
Urban Affairs Division.

Q Could you describe your duties with regard to
contract compliance?

A My duties are to implement the President's
Executive Order as far as insuring equal employment
opportunity on construction jobs that are funded by
Federal EPA money. Usually with our agency it is water

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp Smallwood-direct 3797

pollution control waste treatment plants of which there are about ten under construction in the City of New York.

Q Could you identify those projects for us, please.

A The biggest is called the North River Project. It is in the Hudson River at West 135th Street and it runs north to about 145th Street. There is Wards Island, which is in the East River. There is Bowery Bay, which is near LaGuardia Airport. There is Jamaica Bay, the treatment plant which is near JFK Airport. There is Tallman's Island which is in Jamaica Bay. There is 26 Ward, which is a Brooklyn project. Port Richmond and Oakwood, which are in Staten Island. I believe that covers most of the projects.

Q Is the Rockaway Beach Project covered?

A That is another one, Rockaway.

Q Is the Huntspoint Project under EPA?

A Huntspoint, yes. That's in the South Bronx.

Q Is the Water Tunnel Project under your jurisdiction?

A The Water Tunnel Project is not funded by our agency. We only fund where waste water is involved. I believe the Water Tunnel involves clean water and I believe it is funded by HUD.

1

gp

Smallwood-direct

3798

3

2

Q What position did you hold before your present one?

3

4

A Before my present position I was the Regional Director of the Office of Federal Contract Appliance in the United States Department of Labor.

5

6

7

Q Did you have any responsibilities there with respect to Equal Employment Opportunity?

8

9

A Yes, I did. I was responsible for the

10

negotiation of voluntary home town plans, which was the

11

policy of the Labor Department at the time, to seek to

12

get tripartitte agreements between the community, the

13

contract association and the building trades to provide

14

for the entry of minorities into the industry in terms of

15

goals and timetables based on population.

16

Q Mr. Smallwood, could you describe for us the

17

procedures you presently use to monitor Equal Opportunity

18

and Contract Employment Compliance?

19

A Well, when I came to the Environmental Protection

20

Agency in May of 1972 we started the procedure required

21

by the Department of Labor of requiring each contractor

22

to submit a monthly manpower report which we give the man

23

hours off of his payrolls of all of the crafts working on

24

the job broken down by the various minority ethnic groups.

25

Then we monitor the compliance by holding pre-award and

1
2 post-award meetings with contractors and visiting job
3 sites due to discrepancies which many times were found
4 in the monthly manpower reports and to check out complaints
5 from minority workers on these projects against particular
6 crafts. In some cases there were complaints against
7 operating engineers.

8 Q What kind of discrepancies are you referring to?

9 A Well, sometimes the head count on the monthly
10 report, it didn't correlate with the man hours that reported
11 or in many cases the minorities were brought on the job
12 the latter part of the month, which would raise the head
13 count for the month, but it would show a higher percentage
14 by head count than you would get by doing -- by looking at
15 the minority utilization by man hours for the entire month.

16 The other types of discrepancies were in some
17 cases workers reported by the contractors as minorities
18 were not in fact minorities. There was one case where
19 the investigation showed that Italian workers had been
20 reported as Puerto Rican workers.

21 Q Has this happened with operating engineers?

22 A Yes, it has.

23 Q Does your office verify the existence of trainees
24 or of journeymen as well?

25 A We verify all of the minority workers that are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp Smallwood-direct 3800
reported by the contractors, whether they are journeymen,
helpers, apprentices or trainees when we do an on-
site audit.

Q Is there more work or less work for operating
engineers in 1974 than in the past year in contracts
within your responsibility?

A Well, on Environmental Protection Agency
projects, the work for the building trades has increased
because in this field the Clean Water Acts required the
water be cleaned up by 1985 and based on our consolidation
of all the reports I believe the work for operating engineers
increased on these pollution projects by roughly 25 per
cent in 1974 over 1973.

Q I show you what has been worked as Plaintiff's
Exhibit 109 for identification and I ask you if you can
identify that, please.

A Yes, I can identify this as a survey that my
office made comparing the peak of the construction season
that we saw in the month of August, 1974, with the month
of August, 1973, on the pollution projects that are funded
by my agency in the City of New York.

Q Is this based on the manpower reports which
you receive on a monthly basis?

A Yes. This is based on the monthly manpower

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

reports received from the various contractors.

MR. GLASSMAN: I offer Plaintiff's Exhibit 109 in evidence.

MR. KENNEDY: Would it be in order if I asked the witness a short voir dire on this?

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. KENNEDY:

Q Mr. Smallwood, was this exhibit prepared on the basis of the ten projects that you referred to previously? Do you understand my questions?

A Yes. The 1973 figures are based on only nine projects because the Oakwood Beach Project did not start, I believe, until this year, so the ten projects would be involved in 1974, but there were nine projects in 1973.

Q The compilations were taken, were they not, from the contractors' reports?

A From the Monthly Manpower Utilization Reports submitted to us by contractors.

Q Do you have with you the back-up reports for these figures, that is, the contractors' monthly reports?

A I have it in my office. I don't have it with me.

Local 14
12/12
4.1am

1 jhsr

Smallwood - direct

3802

2 Q But did you personally prepare this, Mr. Smallwood,
3 from those reports?

4 A Yes, I personally prepared this from those reports.

5 MR. KENNEDY: I have no objection, your Honor.

6 MR. BRADY: No objection.

7 THE COURT: Received in evidence.

8 [Plaintiff's Exhibit 109 received in evidence.]

9 BY MR. GLASSMAN:

10 Q Mr. Smallwood, if contractors are not in com-
11 pliance, what does your office do?

12 A Well, after a reasonable period of time, say a
13 month, if there is no improvement in increase in minority
14 utilization, I would issue a show cause notice, a 30-day
15 show cause notice. The contractor is given 30 days to
16 show that he is in compliance, or if not, that he has made
17 a good faith effort to reach compliance.

18 Q What do you mean by good faith effort?

19 A Well, a good faith effort would mean that the
20 contractor has attempted to live up to the contractual
21 obligations in his contract that he would meet with the
22 union supplying his manpower and try to get their cooperation
23 in getting minority workers referred to the job so that
24 the contractor can live up to his obligation under the
25 executive order, and beyond that, advertising in the

minority newspapers or going into the communities and meeting with minority group referral groups that may be able to help them recruit minority workers.

In other words, good faith effort means if he can get the manpower through his efforts with the union, that's fine. We don't care where he gets the minorities as long as he doesn't stop at one point and say, "I can't find qualified people, they are not coming to the job or to the union halls." We feel the burden is on the contractor to show that he has exhausted all possible sources, you know, in the labor market area.

Q Have you specifically requested contractors to contact the Operating Engineers Union?

A Yes. Many of the show cause notices that I issued involved the under-utilization of minority workers in the operating engineers trade and that resulted in conferences with the contractors over the problem of remedying the situation.

Q And what is the result of your request?

A Often the contractors would cite the difficulties they had in getting the unions to refer minorities in sufficient numbers for them to be in compliance.

Q How many show cause orders have been issued by your agency since you assumed your present position?

1 A About 110. I know it's over 100. Roughly 110
2
3 or 120 show cause notices.

4 Q Approximately how many of these have been on jobs
5 with operating engineers in the City of New York?

6 MR. KENNEDY: Object to the form of that question.
7 I have no objection to Mr. Glassman asking how many show
8 cause orders relate to operating engineers, but not to
9 jobs where operating engineers are employed.

10 THE COURT: I will sustain the objection because
11 I don't think that would give a very clear picture.

12 MR. GLASSMAN: I will rephrase the question.

13 Q How many of these show cause orders relate to
14 operating engineers in the City of New York?

15 A 20 to 25.

16 THE COURT: Out of a total of how many?

17 THE WITNESS: Out of a total of about 100.

18 Q Mr. Smallwood, I show you what has been marked
19 as Plaintiff's Exhibit 110 for identification, and ask you
20 if you would identify that.

21 A These are copies of show cause notices that went
22 out over my signature to contractors here in New York City.

23 Q Are these examples of the show cause orders that --

24 A Yes, these are samples of the types of show cause
25 notices that went out. The first one I see is to Horn

Construction Company on the 268th Ward Project in Brooklyn. Further down I see it lists the trades that were under-utilizing minority manpower, five trades listed here, starting with operating engineers, carpenters, dock builders, metal lathers and laborers.

MR. GLASSMAN: I offer Plaintiff's Exhibit 110 in evidence.

MR. KENNEDY: I have no objection, your Honor.

MR. BRADY: I have an objection, your Honor, and the objection is based upon the fact that it just says operating engineers on these complaints and it doesn't say which local. There are two separate defendants here.

THE COURT: These complaints are directed to the contractors, not to the local.

MR. BRADY: Yes, that is correct, your Honor, but it states regarding the under-utilization of operating engineers, but since we have two separate and distinct defendants here, 14 and 15, I think it is unfair to permit that in the record because it may relate only to one local, the specific complaint may have related only to one local.

THE COURT: The Government has the burden of showing that, don't they? The exhibit is only as good as it appears.

2 Possibly some analysis of the job would indicate
3 whether it's Local 14 or Local 15. I don't know.

4 [Plaintiff's Exhibit 110 received in evidence.]

5 Q Mr. Smallwood, when your agency receives reports
6 about operating engineers do you know if that refers to
7 operating engineers under Local 14's or Local 15's
8 jurisdiction or both?

9 A You mean complaints from minority workers
10 regarding discrimination?

11 Q No. I am talking about the monthly manpower
12 utilization reports on which these show cause orders are
13 based. Do those reports when they show operating engineers
14 relate to Local 14 or Local 15 or both, if you know?

15 A Some of the reports, the monthly manpower
16 utilization reports, break down the operating engineers
17 between the two locals, other reports do not, or they
18 just consolidate all of the hours from the payroll under
19 operating engineers without a differentiation between the
20 locals.

21 Q What does the term operating engineers on these
22 show cause orders refer to?

23 A On these show cause orders it refers to goals
24 for operating engineers that were established not in terms
25 of which local they would come from, just general goals

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

6 jhsr

Smallwood - direct

3907

for journeymen operating engineers, without specifying, you know, whether they were 14 or 15. So I would say our orders relate to the general classification of operating engineers without --

THE COURT: Without any specification?

THE WITNESS: Without any specification.

A [continuing] But from our knowledge of those reports that did give separate hours for 14 and 15 men we note that the contractors were having problems with both locals.

Q Mr. Smallwood, have you had any meetings with representatives of the Board of Urban Affairs with respect to Equal Employment Opportunity contract compliance?

A Yes. I had two major meetings with them. When I commenced work with the Environmental Protection Agency the first year I believe we issued 30 show cause notices and that caused the BUA to invite me to a meeting and they challenged my authority or they disagreed with the way that I was trying to get compliance. They even indicated that the contractors weren't required to file these reports. That was the meeting the end of the summer I believe of '73. The most recent meeting I believe was the early Fall of this year.

Q Who was present at the meeting this year?

2 A James Dooley, the Deputy Director of the Board
3 of Urban Affairs. He called me and said he wanted me to
4 meet the new Director of the Board of Urban Affairs. I
5 forget his name.

6 Q What did Mr. Dooley say to you regarding enforce-
7 ment of Equal Employment Opportunity contract compliance
8 provisions?

9 A He said he was unhappy with the problems I was
10 causing contractors, that he felt I was shooting from the
11 hip, that I could better spend my time in throwing aliens
12 off of these construction jobs in the City to open up
13 slots for American citizens and to spend my time doing
14 something about the fact that non-union contractors were
15 getting more and more work in the City as against union
16 contractors getting this work.

17 Q Did he say anything else to you ?

18 A Yes. He said if I didn't stop in my endeavors
19 to get more minority workers through my way of doing it
20 on these jobs the BUA would use their clout and see that
21 I was removed from my job, that they had a staff of
22 attorneys who were studying my activities and they would
23 prepare a case that would take care of me.

24 MR. BRADY: Your Honor, I am going to move to
25 strike all of this testimony.

1 THE COURT: I don't know what this has to do
2 with this particular case.

3 MR. BRADY: Right.

4 MR. GLASSMAN: Your Honor, Mr. Dooley testified
5 in the defendants' case and was a representative of theirs
6 on the Board of Urban Affairs and we just --

7 MR. BRADY: That has nothing to do with this
8 testimony, your Honor. If this is supposed to be
9 rebuttal it's improper.

10 MR. GLASSMAN: It relates to his testimony
11 regarding the enforcement and possible affirmative action
12 that was or was not taken.

13 THE COURT: I will take it, but I don't see
14 that its connection is really overpowering.

15 MR. GLASSMAN: I will go on, your Honor.

16 Q Mr. Smallwood, what guidelines or goals are
17 you now using in your contract compliance efforts?

18 A As of December 1st Part 2 of the bid conditions
19 on all federally assisted work in New York City went into
20 effect through a directive from Mr. Davis, the Director
21 of the Office of Federal Contract Compliance in the U. S.
22 Department of Labor in Washington.

23 Q What do these bid conditions provide?

24 A They call for percentage ranges of minority
25

utilization by craft on all jobs that are covered by these bid conditions and require all new invitations to bid on federally assisted work in New York City to direct the bidders to address themselves to these percentage ranges for each craft if their bids are to be responsive.

Q Is there any particular percentage range or goal for operating engineers?

A Yes. The range -- the current range for operating engineers would be roughly 25%.

Q Do you still regard the New York Plan as adequate for contract compliance purposes?

A Well, personally I never did, but officially the U. S. Department of Labor has -- they have not renewed their approval of that plan beyond, say, November 30th, and this directive that came out from the Labor Department dated November 27th specifically says that participation in the New York Plan for training no longer meets the requirements of affirmative action under Executive Order 11246.

Q Mr. Smallwood, if the City is involved in funding a contract jointly with the Federal Government and they have different enforcement goals which applies on contracts?

A Where the City requires higher goals because of specifications they put in these contracts the higher goals

2 are required. I believe it's the Mayor's order 71 that
3 is operative here for those projects that that was in the
4 bid specifications.

5 MR. GLASSMAN: I have no further questions.

6 CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q Mr. Smallwood, I call your attention to Government's
9 Exhibit 110. I am referring now to the first page.

10 That was a complaint filed against Horn Construc-
11 tion Company, was it not, sir?

12 A It's not a complaint. This is a show cause
13 notice to Horn Construction Company notifying them they
14 had 30 days to get in compliance or we were going to take
15 debarment action to cancel their contract.

16 Q Did they comply, sir?

17 A They complied, which means they met -- they
18 either met the minority manpower requirements or we were
19 satisfied they had made a good faith effort.

20 Q The second show cause order relates to Andrew
21 Catapano. Did CATapano comply, Mr. Smallwood?

22 A Yes. This was another instance of a show cause
23 notice being listed either because the contractor was
24 able to recruit minority manpower outside of the union
25 process or he put more pressure on the union or in some

1 11 jhsr

Smallwood - cross

2 cases the union didn't refer the minorities but we felt
3 he made a good faith effort in trying to get people through
4 community organizations, maybe the people the community
5 organizations referred were not qualified, but on the
6 overall picture, considering good faith effort, the show
7 cause was lifted.

8 Q To save some time isn't it a fact that all of
9 these show cause orders that are contained in Government's
10 Exhibit 110 were lifted?

11 A No, it was not a fact.

12 Q Which ones were not, sir?

13 A I believe the one of May 20th involving Slattery-
14 Horn-Sand, a joint venture dated May 20, 1964, the Hunts
15 Point water pollution project, we are still having problems
16 with this contractor on minority utilization on that job.

17 Q Does that have anything to do with operating
18 engineers?

19 A My recollection is that it does, they are under-
20 utilizing, still are under-utilizing minority operating
21 engineers on that project.

22 Q It doesn't say so on that order to show cause
23 though, does it, sir?

24 MR. GLASSMAN: Your Honor, the document speaks
25 for itself. I would refer to the letter dated November 19,

1973, which does list operating engineers.

MR. KENNEDY: I believe that the witness was talking about the document dated May 20th.

Q Were you not, sir?

A Right. What we have here is two separate show cause notices involving the same contractor, the same project.

THE COURT: In the one case where the operating engineers were involved possibly that difficulty was disposed of and that is why they are not mentioned in the second letter.

MR. KENNEDY: I just wanted to find out if there was any situation where the operating engineers were on a job where the contractor was bumped off for non-compliance. I think the witness has answered that.

THE COURT: All right.

Q Are there situations --

A The operating engineers are involved in the second show cause to Slattery. The first show cause was lifted, but we have further difficulties and continuing difficulties with Slattery, and it does involve operating engineers. It was not mentioned in that letter, but in other correspondence --

Q Will you please listen to the question.

1 13 jhsr

Smallwood - cross

3814

2 MR. GLASSMAN: Can the witness finish his
3 answer?

4 MR. KENNEDY: No, no. The witness was going
5 beyond the question.

6 Q Mr. Smallwood, was the order to show cause dated
7 June 18, 1974 against Slattery lifted?

8 A May 20, 1974 I had.

9 Q No, sir, June 18, 1974.

10 A I have --

11 Q It's the last page.

12 A No, it was not lifted.

13 Q Was Slattery bumped off the job?

14 A June 18, 1974, this is a follow-up to the May
15 20th show cause notice, and that has not been lifted.
16 We are still having difficulties with this contractor and
17 he has reported he is having difficulties in meeting his
18 manpower commitments. It includes operating engineers.

19 Q Do you know for a fact whether or not there are
20 25% of operating engineers on that job who are minorities?

21 A To my knowledge, that is not the goal for this
22 particular job. This job was bid on and awarded prior to
23 the Federal implementation of the bid conditions that now
24 require the 25%. It was before that.

25 Q What was the goal for this one for operating

engineers, Mr. Smallwood?

A I don't remember exactly. I would think it would be in the neighborhood of 25%.

Q Are there 25% minority operating engineers on that job today?

A I don't know whether there are on that job today. I just go by the most recent manpower report. We get them the 5th of the month for the previous month. So we would have one dated -- that we received December 5th for the month of November.

I believe based on that report -- and we have a program in conjunction with the City's compliance program and the City has indicated there are still problems and they called a meeting recently. I was not at that meeting. So I can't be too specific about that.

Q What I am getting at, Mr. Smallwood, it is possible, is it not, that the operating engineers on that particular job, Slattery's job, have met the goal insofar as supplying minorities are concerned?

MR. GLASSMAN: Objection, your Honor. I don't know whether he should testify whether it is possible or not. He has already answered the question, I believe, as to what he knows about the present status.

MR. KENNEDY: I think it is perfectly proper

2 cross-examination, your Honor. I am asking him a question.

3 THE COURT: Yes, I think he can answer the
4 question. I would rather have somebody who knows something
5 about it rather than discuss possibilities.

6 Q Mr. Smallwood, did you understand my question?

7 A I am not sure. Could you repeat it?

8 Q Sure. What I am saying is the operating engineers
9 could very well be in compliance on that particular job,
10 isn't that correct?

11 A On a given day, yes. But the requirements are
12 uniform minority utilization throughout the job. So part
13 of our problem with Slattery was that he had been out of
14 compliance for two years and we didn't want to let him
15 off the hook just because he met his ranges in the last
16 six months of the job.

17 Q I understand that. What I am saying is this:
18 Slattery's problems relate to the plumbers, the lathers,
19 steam fitters, the dock builders and operating engineers,
20 that was the overall complaint, isn't that correct?

21 A Right, several trades.

22 Q Several of those unions have met their quota,
23 have they not, sir, and some have not?

24 A That's true.

25 Q And do you know for a fact whether or not the

operating engineers have met their quota on Slattery's job?

A As far as I know, they haven't. I know the plumbers have and the steam fitters out of that group. But the other trades, they haven't, to my knowledge.

Q You are absolutely sure of that?

THE COURT: Why don't we get a copy of that document that was received on December 5th -- that is now behind us -- and see what it says.

MR. KENNEDY: December 5th?

THE WITNESS: That was the receipt date for the November monthly manpower utilization report, which should be in my office.

THE COURT: You can make that available.

MR. KENNEDY: I have no further questions.

THE COURT: We will recess for lunch and come back at two o'clock.

MR. BRADY: I have just one question.

THE COURT: I beg your pardon.

CROSS-EXAMINATION

BY MR. BRADY:

Q Mr. Smallwood, you testified that contractors can seek minorities in the community to comply, isn't that so?

2 A Yes, if they cannot get them through their normal
3 referral system. We recognize they have collective
4 bargaining agreements with unions that have contract
5 clauses that require, you know, exclusive arrangements.
6 But our policy is that is no defense to meeting their
7 commitment, so they have to go outside of the referral
8 system.

9 Q Do you know which contracts and which unions
10 require exclusive hiring hall arrangements?

11 A Yes. We require copies of the contracts from
12 the contractors. Any doubt, we would contact the BUA
13 for further clarification or the union officials themselves.

14 Q Do you know the contractual arrangements between
15 Local 15 and their contractors insofar as referral is
16 concerned?

17 A Well, I know what the practice is.

18 Q You are talking about contracts, you mentioned
19 contracts. I am asking you if you know the contractual
20 obligations regarding referrals between Local 15 operating
21 engineerings and the contractors.

22 A Well, I have a working knowledge of it, yes.

23 Q Is it your testimony that the contractor must
24 go through Local 15 in order to get its referrals of
25 journeymen or apprentices?

2 A Yes, that's what contractors tell us.

3 Q That's what the contractors tell you, right.

4 Now, have you had occasion when the contractors
5 have gone out into the community to obtain operating
6 engineers under Local 15's jurisdiction? Do you recall
7 any such instances?

8 A Yes, I can recall that.

9 Q And were they able to obtain the qualified
10 journeymen in the community?

11 A In some cases, yes.

12 Q How many cases are you talking about?

13 A Well, I am thinking of a particular project,
14 but I am sure it's happened in some instances probably
15 on all of the projects.

16 Q Do the contractors tell you that they are able
17 to get qualified journeymen in the community?

18 A Yes, in some cases qualified journeymen walk on
19 their job. Then they have the problem of getting a work
20 permit from the hiring hall so that the man can work.

21 Q You said that you weren't concerned with what
22 the contractual obligations were. You said as long as
23 they could get qualified people they could put them on
24 the job, isn't it so?

25 A Well, yes. What I am referring to is a contractor's

4.4a.m.

19 jhsr

Smallwood - cross

3820

problem, it's not, you know, an EPA problem.

Q Tell me, Mr. Smallwood, if the contractors can find these qualified men from sources other than the unions -- you say that they can always find qualified men?

A Not always, no.

Q Otherwise they would be in compliance, wouldn't they?

A If they documented -- made a good faith effort, right, they would be in compliance, or if they had received them through their normal sources.

Q Are there occasions when you find that they have made a good faith effort to find qualified operating engineers in the community and they can't locate such qualified --

A My experience is they are very reluctant to take that step.

Q That is something --

A And many don't take that step.

Q That was not the question, Mr. Smallwood.

A What was the question?

Q The question was, do you know of contractors who have advised you that they have attempted to comply by finding qualified engineers in the community and have been unable to get those people in the community.

1
2 A Well, usually they haven't exhausted all possible
3 recruitment sources when they say that and I offer them
4 a few more places to try.

5 Q But they have --

6 A Sometimes they have found a man and they relate
7 to me difficulty they have in getting the man sanctioned
8 by the local to work because he is not a member of Local
9 15.

10 MR. BRADY: I will move to strike that as not
11 responsive, your Honor.

12 I have no further questions.

13 THE COURT: All right. We will adjourn to
14 two o'clock.

15 [Luncheon recess.]
16
17
18
19
20
21
22
23
24
25

A F T E R N O O N S E S S I O N

2.00 P.M.

MR. GLASSMAN: May I proceed, your Honor?

THE COURT: Yes.

MR. GLASSMAN: The government calls James Bryan.

J A M E S B R Y A N, called as a witness on behalf of the government, being first duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

B Y M R . G L A S S M A N :

Q By whom are you employed?

A The New York State Department of Labor.

Q In what capacity are you so employed?

A I am a senior on-the-job training specialist.

Q Can you describe for us what your responsibilities are?

A Primarily I supervise a group of on-the-job training specialists in the development and monitoring of on-the-job training contracts between the State of New York and employers in New York City. I am also responsible for the operation or in charge of the office in New York City, and I also act as the local liaison person for the State of New York and the New York Plan.

1 gp2 Bryan-direct

2 Q Between the State of New York and the New York
3 Plan?

4 A Yes.

5 Q Could you describe for us what functions you
6 perform with respect to the New York Plan?

7 A Well, the State's responsibility is solely to
8 recruit applicants who are interested in joining the
9 New York Plan and also to monitor the contract.

10 Q What facilities do you have for obtaining
11 applicants for the New York Plan?

12 A We have about 40 local offices of the New York
13 Employment Service scattered throughout the City and if an
14 applicant walks in and expresses an interest in being
15 enrolled in the program, we have interviewers in these
16 locations who will take an application.

17 Q Does your office rely on applicants walking into
18 these offices or does the office actively recruit people
19 for the New York Plan?

20 A Primarily walk-ins. We do no active recruitment.

21 Q If a man comes in and applies for the New York
22 Plan, does he ask for a specific trade?

23 A He might, or oftentimes they may say just any,
24 but we do job specifications there and the interviewer
25 will, of course, use this as a guide along with the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp

Bryan-direct

3824

applicant's interests.

Q Are there any particular specifications or requirements for operating engineer trainees?

A We do have those on file.

Q Can you describe those for us.

A As I recall, it is essentially an age specification of 18-plus, an educational specification of high school graduation preferred, having the physical capability to perform the job and also no fear of working at heights.

Q From whom does your office obtain those specifications?

A From the New York Plan For Training Director.

Q Has your office been told anything about the length of the training?

A Approximately two years.

Q If a man comes to you with prior construction experience, is that noted on his application?

A Yes. I have alerted the field people to indicate that in a space on the application record and my staff and my office, before sending this application to the New York Plan will put that -- underline this in red to make sure they see this man has had some construction experience.

Q What does your office do with the applications for the New York Plan?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp

Bryan-direct

3825

A After the application is completed at the local offices, they are sent to me and I send these applications through my staff to the New York Plan on demand.

Q Do you know if there is a backlog of applications in the New York Plan office?

A I would say yes.

Q Do you have a backlog of applicants for the New York Plan in your office?

A Oh, yes.

Q How big is that backlog for all construction periods?

A Oh, of course, it changes daily, but I would say between 1500 and 2000.

Q Approximately how big is that backlog for specifically designated operating engineer trainees?

A About 250.

Q Mr. Bryan, I show you what has been marked as Plaintiff's Exhibit 111 for identification, and I ask you if you would identify that for us.

A Yes, I can identify this as the list which I had my staff prepare for you on or about the 12th of November of those persons awaiting placement as operating engineers.

MR. GLASSMAN: I offer Plaintiff's Exhibit 111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GP

Bryan-direct

3826

in evidence.

MR. KENNEDY: Your Honor, I am going to object simply on the ground that I think this is improper rebuttal testimony at the present time. I don't know what it is in rebuttal to.

MR. GLASSMAN: Your Honor, this is purely in rebuttal to the alleged affirmative action taken by the defendant on the question of what people are available for a job.

THE COURT: That is part of his direct case.

MR. KENNEDY: That's right.

THE COURT: I will treat it as reopening their main case and you can feel free to go into it, but I hope we are not going to merely carry on what I hope is behind us.

MR. KENNEDY: Under those circumstances, I will withdraw the objection, your Honor.

xx

(Plaintiff's Exhibit 111 received in evidence.)

MR. GLASSMAN: I have no further questions of this witness, your Honor.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Bryan, are you familiar with the economic

1 conditions in the building trades at the present time?

2 A No more than I read in the papers.

3 Q Isn't it a fact, Mr. Bryan, that many of the
4 people on that waiting list are there because there are no
5 jobs available, isn't that correct, sir?

6 A Oh, of course I would say that, yes.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 jhsr

Bryan - cross

3828

2 Q In other words, as opposed to discriminatory
3 practices.

4 MR. GLASSMAN: I would say, your Honor, if the
5 witness knows the answer to this question. I am not sure
6 the witness is competent to answer as to the reasons for
7 the waiting list.

8 Q Do you know, Mr. Bryan, whether or not economic
9 conditions have any part in the placement of trainees?

10 A Well, I think that's general knowledge. Affirma-
11 tive, yes.

12 MR. KENNEDY: I have no further questions.

13 MR. BRADY: I have no questions. Thank you,
14 Mr. Bryan.

15 [Witness excused.]

16 MR. GLASSMAN: The Government calls Jacob Grill.
17 J A C O B G R I L L , called as a witness in behalf
18 of the plaintiff, being first duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. GLASSMAN:

22 Q Mr. Grill, by whom are you employed?

23 A New York City Building Department.

24 Q In what capacity are you so employed?

25 A I am the Director of the Division of Cranes,

Derricks, hoisting and rigging of the Department of Buildings, a division of the Department of Buildings.

Q How long have you been so employed?

A Six years approximately.

Q What is your educational background, sir?

A I am a graduate civil engineer and a professional engineer licensed by the State of New York.

Q What type of positions did you hold prior to your present one?

A I have held various structural engineering jobs since 1950, at which time I graduated from school, and most of my experience has been in the materials handling business, design of movable structures for materials handling.

Q What were your initial responsibilities as director of the New York City Division of cranes, derricks, hoisting and rigging?

A I was hired from the private sector to start up and organize a section in the Department of Buildings which would incorporate the hoisting and rigging section which they had at that time, which was an inspectional section, and it was to be expanded with an engineering section, which was to be hired, provided that the legislation which was being written at the time that I was hired

would be passed.

In other words, I was to head up a new division with the Building Department whose main function was to inspect and analyze the cranes and derricks operating in the City of New York.

Q What are the current responsibilities of your division?

A At the present time we -- our inspectional section inspects all hoisting equipment in the City of New York -- when I say all hoisting equipment, the equipment that is under our jurisdiction -- and we also analyze all new equipment coming into the City from an engineering standpoint so far as structural capabilities is concerned or structural integrity.

Q Does your division have any responsibility with regard to checking to see if men have licenses?

A Yes. At any time that any of our inspectors are sent to a specific site we always check to see if the man is licensed on the machine.

Q Are you now referring to a hoist machine operator's license?

A Yes, sir.

Q If a man has not renewed his license what is the effect of the non-renewal?

1
2 A He is unlicensed.

3 Q Under what statute or regulation are you operating
4 in determining when a license is required?

5 A Well, Local Law 73, which was -- of 1969, which
6 was passed in December of 1969, is part of the building
7 code, and that outlines what licenses are required.

8 Q Did you have any role in preparing that legisla-
9 tion?

10 A Yes. I was instrumental in helping to write the
11 legislation.

12 Q I show you what has been marked as Plaintiff's
13 Exhibit 112 and ask you to identify that.

14 A This is a copy of Local Law 73, the legislative
15 section, and the reference standards which are part of the
16 local law.

17 MR. GLASSMAN: I offer Plaintiff's Exhibit 112
18 in evidence.

19 MR. KENNEDY: Again, your Honor, I don't know
20 what this is in rebuttal to. I think we have already had
21 testimony on the affirmative cases for both sides on what
22 the law is.

23 THE COURT: I don't know what the relevance of
24 it is. We don't have a jury. I will take it.

25 [Plaintiff's Exhibit 112 received in evidence.]

Q Mr. Grill, could you describe for us what equipment requires and what does not require a hoist machine license to operate?

A Basically all hoisting equipment which does work on buildings or the construction of buildings requires a license. Earth moving equipment, such as backhoes, bull dozers, front end loaders, machines that are normally not used in the erection per se of a building, are exempt from the legislation. Their exemption is spelled out in the legislation, but this more or less summarizes it.

Q Does a scraper require a license to operate?

A No.

Q You mentioned backhoes are exempt. Does this include cable and hydraulic backhoes?

A I would say it does. We don't inspect that sort of equipment.

Q Does it include big or small backhoes?

A All backhoes are exempt.

Q Does a power shovel require a license to operate?

A No, it does not.

Q Does a grade-all?

A No.

Q Does a tunnel mucking machine?

A No.

1
2 Q Does a back-filling machine require a license to
3 operate?

4 A No.

5 Q Does a compressor?

6 A No.

7 Q Does a well point pump?

8 A No.

9 Q Does a concrete mixing machine?

10 A No, it doesn't.

11 Q Does a welding machine?

12 A No.

13 Q Does a spreader?

14 A No.

15 Q Does a locomotive?

16 A No.

17 Q Does a roller?

18 A No.

19 Q Does a drag line?

20 A Offhand, I would say a drag line does not require
21 a license.

22 Q Does the City's licensing jurisdiction include
23 all work within the boundaries of New York City?

24 A It does not. It does not include agencies such
25 as the Port Authority, the New York State Dormitory

Authority, the Urban Development Corporation and agencies of this nature.

Q When you say it does not include the Port Authority, would it include the World Trade Center?

A It does not include the World Trade Center. We have no jurisdiction there at all.

Q Would it include the airports?

A No. That's Port Authority.

Q Would the City's jurisdiction include work performed for the Tri-Borough Bridge and Tunnel Authority?

A It does not.

Q Does it include tunnel work?

A Well, if it's open cut for MTA, for Metropolitan Transit Authority, we do have jurisdiction there.

Q Other tunnel work?

A No, it does not, not on other tunnel work. But if there is a crane in the street for an open cut for a subway, we do have jurisdiction there.

Q Is it correct that all of the work you just described as exempt does not require a City license for a man to operate on that equipment?

A That's correct.

THE COURT: Does it require any license?

THE WITNESS: I guess it requires some sort of

2.2pm

a chauffeur's license or a State license. I am not sure about that.

Q Do you know what licenses if any it requires?

A No, I don't.

Q Who on your staff actually performs the inspections?

A We have an inspection force of approximately eight people, a chief inspector and an assistant chief inspector.

Q Who is your chief inspector?

A George Durkin.

Q Does your department perform inspections of long boom cranes?

A Yes, it does.

Q Must a long boom crane be inspected on any job site at which it is used?

A Any machine over 250 foot boom length is inspected at each and every site upon assembly.

Q Approximately how many long boom cranes are currently being used in the City?

A At the present time?

Q Yes.

A Very few, because of the construction slowdown.

Q Approximately how many?

A Right now, I would say about four or five, to

2 my recollection.

3 Q Approximately how many long boom cranes are
4 registered in the City at the present time, if you know?

5 A I don't have the exact figure, but I can give
6 you an estimate of about 25.

7 MR. GLASSMAN: I have no further questions of
8 this witness, your Honor.

9 CROSS-EXAMINATION

10 BY MR. KENNEDY:

11 Q Mr. Grill, some of the equipment that ordinarily
12 doesn't require a license is adaptable to have lifting
13 equipment put in its place and change its operation, isn't
14 that correct?

15 A Yes, it is.

16 Q When that equipment has the lifting or hoisting
17 operations on it does that then require a license?

18 A Yes, it does.

19 Q Does the operation of all types of cranes in the
20 City of New York require licenses?

21 A Well, I just described those -- you mean cranes
22 with laced booms or hydraulic machines?

23 Q Yes.

24 A Basically I would say yes. There are some cranes
25 which are exempt from -- there are three types of -- when

you say licenses, you are talking specifically about an operator's license?

Q Yes, I am, sir.

A Basically every machine which is not exempt, which we mentioned before, needs some sort of operator's license. There are three types, an A, B and C license.

Q With respect to the A and B licenses, would they cover derricks of various kinds?

A Yes. There are special licenses for -- if a man only operates a derrick normally he would require just a special. But a man that can operate an A machine is also qualified to operate a derrick.

Q What about pile drivers, sir, where it's done in City jurisdiction?

A Pile driving equipment does require a license because the machine has to be moved from spot to spot.

Q So it would be cranes, derricks --

A And hoisting equipment.

Q Those include the elevators that run up --

A No, we don't have jurisdiction over elevators. We have jurisdiction over what we call Chicago booms, gin poles. The Chicago boom is nothing more than a piece of equipment which is attached to the crane on the outside of the building in order to lift up to the various floors.

end take.

T3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gpl

Grill-cross

3838

Q How many cranes other than long boom cranes would you estimate are operative in the City of New York?

A I would say all in all we have been -- in the vicinity of about 14 to 15 hundred machines which are registered with us, long boom cranes are included. There must be 25 to 30, something like that.

Q And they would all require licenses, would they, sir?

A Yes, sir.

Q Would derricks fit into that category as well?

A Yes. Derricks are included in this 14 to 15 hundred machines.

Q You visited various job sites in building construction, I assume, from time to time, is that correct?

A Yes.

Q Are you familiar, sir, with the jurisdiction of Local 14 insofar as the machinery that they operate?

A I believe I am.

Q Are you able to tell us, sir, on a particular job site what percentage of equipment would be licensed as opposed to unlicensed? I am referring specifically to the work that operating engineers would do.

A At any building site, any equipment which is used to construct the building, any hoisting equipment,

gp2

Grill-cross

all requires licenses, every piece of equipment.

MR. KENNEDY: I have no further questions.

MR. BRADY: I have no questions, your Honor.

MR. GLASSMAN: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. GLASSMAN: The government calls George Durkin.

G E O R G E F. D U R K I N, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GLASSMAN:

Q Mr. Durkin, by whom are you employed?

A The New York City Department of Buildings.

Q In what capacity?

A Five-Borough Chief Inspector, Crane & Derrick Division, and also included is the Hoist & Rigging Division. It is one separate division.

Q Have you personally operated heavy equipment?

A Yes, sir, I have.

Q Can you describe for us your background prior to joining the Department?

A Well, out of high school and I went to work for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp3 Durkin-direct

Jay Rich Steers, Inc. building the East River Drive, the section between 79th Street and 120th Street. I worked on a floating derrick.

Q Where did you work after that?

A What was that, sir?

Q Where did you work after that?

A After that I worked for the Tidewater Oil Company, East 22nd Street, Bayonne, New Jersey, an oil refinery.

Q What experience did you have as to that?

A Well, I went into the Military, the U.S. Coast Guard, and at one point in my service I was assigned to a repair base in which I operated cranes and hoists of various types.

Q When and how did you become an inspector for the City of New York?

A I took a competitive examination and passed and was appointed on February 6th of 1951.

Q Under what law or regulation are you currently operating?

A Local Law 73 of 1969.

Q Did you just hear the testimony of Mr. Grill?

A Yes, sir.

Q Do you as Chief Inspector apply the same rules

gp4

Durkin-direct

as regards what equipment or work requires a New York City license as described by Mr. Grill?

A Yes, sir.

Q Were the same procedures or requirements followed prior to 1969?

A Prior to 1969 we had only a simple set of rules that was forthcoming in 1958, so the same law did not apply prior to 1969.

Q In the 1960s did the City inspect for licenses?

A Our division was only connected with existing buildings and riggers' licenses and in the course of rigging at times cranes were used to hoist various objects in or out of the buildings, and at that time we did ask for the license.

Q When were inspections for licenses started?

A Local Law 73 I believe was passed in December of 1969 and became effective in January of 1970.

Q What type of license was required before 1969?

A It was known as AMPES, Any Mode of Power Except Steam.

Q Was there any equipment that required inspection and a license, an AMPES license to operate before 1969 but did not require a license, an A, B or C license after 1969?

A This is a vague area, because -- to answer your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

gp5

Durkin-direct

3841

question correctly, because the Boiler Division of the Department of Buildings was the issuing agency for the licenses and they had the necessary controls to enforce it. We did not enter the licensing area per se for all types of equipment except what was under the jurisdiction of our division.

Q Was there any particular equipment that was exempted under the new law that required a license under the old law?

A Yes. I believe Mr. Grill reiterated the different types that were exempted.

MR. GLASSMAN: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. KENNEDY:

Q Mr. Durkin, prior to 1969 what did the AMPES license cover?

A Practically every type of machine, I do believe, as again I would have to say that my division did not handle the controls over this type of license.

Q Was there also a portable steam license?

A I believe so.

Q Do you know what that covered, sir?

A I am not -- I can't give you an efficient

answer on that.

Q . . But there were certain pieces of equipment on job sites that required steam licenses as opposed to AMPES licenses, is that correct?

A I do believe that.

Q After 1969 the AMPES license became what?

A Hoisting machinery operator's license.

Q That was either A or B, sir?

A A, B or C.

Q Is there still a portable steam license, to your knowledge?

A There is no mention of a portable steam license in Local Law 73.

Q Do you know of any equipment on job sites today that require a steam license?

A I can only answer your question in this manner: piledrivers, when they use a steam boiler on the rear of the piledriver the boiler is inspected by our boiler division and they require a portable steam.

MR. KENNEDY: I have no further questions.

MR. BRADY: I have no questions, your Honor.

MR. GLASSMAN: I have no further questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

1
2 MR. GLASSMAN: Your Honor, the government has
3 no further witnesses. We do have a number of exhibits
4 we would like to introduce at this time, though.

5 I would first like to offer Plaintiff's
6 Exhibit 10-A, which are selective Local 14 and 14-B
7 meeting minutes. Plaintiff's Exhibit 10 contained Local
8 14 and 14-B regular minutes. These are added to that
9 exhibit.

10 MR. KENNEDY: May I ask your Honor whether
11 this is part of the government's direct case now or is this
12 rebuttal?

13 THE COURT: Mr. Glassman?

14 MR. GLASSMAN: Actually it is a bit of both.
15 Some of the information in those minutes rebuts some in-
16 formation, and we also understood at the close of the
17 direct case that we would be allowed to add additional
18 minutes just to complete the record.

19 THE COURT: All right.

20 MR. GLASSMAN: We have no objection if Mr.
21 Kennedy would like to offer any other minutes subsequently.

22 MR. KENNEDY: That isn't so much my point,
23 your Honor. It is that I had assumed that this was going
24 to be strictly rebuttal. Now I have got to look at it
25 from the standpoint if it is a reopening of their case

whether or not I need time to put in additional proof.

MR. GLASSMAN: It actually does rebut testimony.

THE COURT: That is your right. As I have already indicated, it certainly was not proper rebuttal, but you could consider it as the government having reopened its main case and you can proceed as you may be advised.

MR. KENNEDY: What I can do is this, your Honor, so as not to hold up the proceedings. I have no objection. They are minutes of the meeting. If the government is going to rest today, I would like at least a day to look over these things to see them.

THE COURT: Surely.

MR. KENNEDY: Thank you, your Honor.

MR. BRADY: I have no objection to that.

(Plaintiff's Exhibit 10-A received in evidence.)

THE COURT: I think all the judges of the court ought to take up a fund that would purchase some new duplicating machinery.

MR. GLASSMAN: Your Honor, I think we share that problem. Some of those documents were actually the originals supplied to us and our duplicating machinery unfortunately is no better.

MR. KENNEDY: It makes it interesting when you

are trying to write a brief, your Honor.

MR. GLASSMAN: Some of the final documents in there are more legible than some of the earlier ones.

THE COURT: I hope that the important ones are the legible ones.

MR. GLASSMAN: I would like to offer at this time Government's Exhibit 91-B. This is a substitute for the 91-B earlier which was withdrawn. Plaintiff's Exhibit 91 was an alphabetical list of union membership in Local 14, 14-B, indicating average annual earnings in the years 1971 to 1973. The plaintiff's proposed Exhibit 91-B further breaks that down with actual earnings in each of the years.

MR. KENNEDY: Your Honor, I have no objection to this being offered at this time. I might say that I have talked to the government about this particular exhibit and I will consent to it going in subject to my checking to see whether the markings on the previous exhibit are placed on this one. I just haven't had a chance to study it, that's all.

MR. GLASSMAN: That is all right, your Honor.

THE COURT: All right, received.

(Plaintiff's Exhibit 91-B received in evidence.)

MR. GLASSMAN: Your Honor, we have asked the

1
2 defendants for a stipulation, since we believe it is so,
3 that Local 14 and 15 have not filed certain Equal Employment
4 Opportunity EEO-2 reports relating to joint apprenticeship
5 programs which we were willing to offer as Exhibit 104.
6 I believe Mr. Brady was to check on that and perhaps we
7 can keep the record up for the purpose of either a stipula-
8 tion or an affidavit or letter from the EEOC to that
9 effect.

10 THE COURT: Is that all right, Mr. Brady?

11 MR. BRADY: Yes, I will check on it, but I
12 just would like to note that the government on the first
13 day of trial withdrew that claim in the complaint, or
14 allegation in the complaint having to do with the misfiling
15 or failure to file appropriate reports. So I am not quite
16 sure what this --

17 MR. GLASSMAN: It is not for that purpose.

18 THE COURT: It is not being received for that
19 purpose as far as the Court is concerned.

20 MR. GLASSMAN: That is correct.

21 We have nothing further, your Honor. The
22 government rests.

23 There is one stipulation which Mr. Brady would
24 like to offer.

25 MR. BRADY: We have one stipulation, your

1 Honor, which I would like to offer into evidence. It
2 shows the approximate known membership of minorities in
3 Local 15 from January, 1964, to January, 1974. It is
4 based upon the IBM runoff that was Exhibit 99.
5

6 THE COURT: Don't we have something like this
7 already in the record?

8 MR. BRADY: You know, your Honor, I must
9 confess that my recollection failed me on that point.
10 I tried to ascertain it by going through the record and
11 I simply couldn't find it and when I asked the government
12 this morning they weren't sure either.

13 THE COURT: It won't do us any harm. Let's
14 have it.

15 MR. BRADY: I think we may have stipulated to it,
16 but I didn't introduce it.

17 THE COURT: It is just somewhere in the back
18 of my mind.

19 MR. BRADY: I have the same --

20 MR. DEVORKIN: Mr. Corcoran and I had a dis-
21 cussion about this piece of paper and I think the paper
22 may not have actually come in.

xx 23 (Defendant Local 15 Exhibit I received in
24 evidence.)

25 MR. BRADY: Thank you.

1 THE COURT: I am sure I saw this before.

2 As I say, it may have been the subject of discussion.

3 MR. BRADY: That may have been. Thank you.

4 THE COURT: What I will do is accomplish
5 everything that we can accomplish except for Mr. Kennedy's
6 checking on those various documents that have been referred
7 to, which I would hope could be done by the end of next
8 week, in any event, and then work out among yourselves
9 the submission of papers.
10

11 I have received no papers from the unions on
12 the matter of their proposed preliminary order dealing
13 primarily with the practices, so I really haven't given
14 them any study.

15 MR. KENNEDY: What we did, your Honor, was
16 we got up the papers as quickly as possible. We were only
17 served on Monday.

18 THE COURT: Okay. I will look them over and
19 then I will be in touch with you before I do anything one
20 way or another.

21 MR. KENNEDY: Thank you.

22 MR. DEVORKIN: Your Honor, would it be your
23 intention to entertain argument on that motion or would
24 you like a legal submission on that? We would be prepared
25 to do that.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GP

3849

THE COURT: I will entertain argument. Sometimes I don't find argument so entertaining, but if you want to I will be glad to hear you next week some time. I would just as soon get the papers, any papers that you want to submit, and then if I feel that argument would be of some help I will get in touch with you and we will set it down for argument.

MR. KENNEDY: That would be fine, your Honor.

MR. BRADY: Thank you.

MR. DEVORKIN: Thank you.

MR. KENNEDY: Your Honor, may we take the opportunity to thank you for your courtesy during the trial.

MR. BRADY: We join in that.

THE COURT: Have a nice holiday.

MR. DEVORKIN: Same to you, your Honor.

- - -

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
James Francis McNamara	3754	3776	3790	
Kenneth Wells Smallwood	3796	3811		
James Bryan	3822	3826		
Jacob Grill	3823			

EXHIBIT INDEX

<u>Plaintiff</u>	<u>Identification</u>	<u>In Evidence</u>
108		3772
114		3793
109		3802
110		3806
111		3826
10-A		3844

Defendant
Local 15

I

3847